

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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DAVID EVERETTE,

Plaintiff,

-against-

18 **CIVIL** 3674 (PAE)(SDA)

JUDGMENT

MARK ROYCE,

Defendant.

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It is hereby **ORDERED, ADJUDGED AND DECREED:** That for the reasons stated in the Court's Order dated May 5, 2022, the Court issued an Opinion and Order on October 13, 2021 denying Mr. Everett's petition to vacate his sentence pursuant to 28 U.S.C. § 2254. See Dkt. 40. On November 2, Mr. Everett filed a notice of appeal. Dkt.41. Recently, the Court's staff was contacted by the Second Circuit's clerk's office inquiring as to whether the Court intended to issue a certificate of appealability for Mr. Everett's claims. This Court's failure to rule on the certificate of appealability at the time of its October 13 decision was an oversight. Pursuant to 28 U.S.C. § 2253, an appeal may not be taken to the Court of Appeals from a final order in a proceeding under section 2254 unless a certificate of appealability is issued. A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." For the reasons set forth in this Court's Opinion and Order denying Mr. Everett's petition, Dkt. 40, Mr. Everett has not made such a "substantial showing." Therefore, a certificate of appealability shall not issue.

Dated: New York, New York

July 27, 2022

RUBY J. KRAJICK

BY:

Clerk of Court

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Deputy Clerk